



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 8, 2004

Mr. David L. Hay  
Officer for Public Information  
Dallas County Community College District  
701 Elm Street  
Dallas, Texas 75202-3299

OR2004-8531

Dear Mr. Hay:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 210686.

The Dallas County Community College District (the "district") received a request for six items related to a Request for Proposal for financial firms to handle a district bond sale. You state that some responsive information will be provided to the requestor. Although you take no position with respect to the remaining requested information, you claim that the submitted information may contain proprietary information subject to exception under the Act. Pursuant to section 552.305(d) of the Government Code, you have notified eighteen interested third parties of the request and of their opportunity to submit comments to this office.<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.

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<sup>1</sup>The interested third parties sent notice pursuant to section 552.305 are the following: A.G. Edwards & Sons, Inc.; Banc of America Securities; Banc of America Securities, L.L.C.; Berean Capital, Inc.; Citigroup; Coastal Securities; Edward Jones; First Albany Capital; J.P. Morgan Securities, Inc.; Lehman Brothers; Loop Capital Markets, L.L.C.; Merrill Lynch; Morgan Keegan; Morgan Stanley; Ramirez & Co., Inc.; RBC Dain Rauscher; Siebert, Brandford, Shank & Co., L.L.C.; and Southwest Securities, Inc.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, no interested third parties have submitted to this office any reasons explaining why information relating to them should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information protected under section 552.110, and none of it may be withheld on that basis. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note, however, that some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, because we have received no arguments regarding the submitted information and it is not otherwise confidential by law, this information must be released in accordance with applicable copyright law for any information protected by copyright.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 210686  
Enc. Submitted documents

c: Ms. Tracy Wallace  
6469 Sandra Drive  
Dallas, Texas 76214  
(w/o enclosures)

Ms. Nora Chavez  
A.G. Edwards & Sons, Inc.  
70 NE Loop 410, Suite 915  
San Antonio, Texas 78216  
(w/o enclosures)

Mr. Riley Simmons, II  
Berean Capital, Inc.  
14001 Dallas Parkway, Suite 1200  
Dallas, Texas 75240  
(w/o enclosures)

Mr. James F. Haddon  
Citigroup  
c/o Dallas County Community College District  
701 Elm Street  
Dallas, Texas 75202-3299  
(w/o enclosures)

Mr. David Holland  
Coastal Securities  
5555 San Felipe, Suite 2200  
Houston, Texas 77056  
(w/o enclosures)

Mr. David G. Faris  
Edward Jones  
4500 Bissonnet Street, Suite 357  
Bellaire, Texas 77401  
(w/o enclosures)

Mr./Ms. Jodie L. Jiles  
First Albany Capital  
4801 Woodway Drive, Suite 300 East  
Houston, Texas 77056  
(w/o enclosures)

c: Mr. John T. Daniel  
Lehman Brothers  
399 Park Avenue, 16<sup>th</sup> Floor  
New York, New York 10019  
(w/o enclosures)

Mr. Curtis Flowers  
Loop Capital Markets, L.L.C.  
440 Louisiana, Suite 900  
Houston, Texas 77002  
(w/o enclosures)

Ms. Michele Voback  
Merrill Lynch  
2121 San Jacinto Street  
Dallas, Texas 75201  
(w/o enclosures)

Mr. Thomas K. Oppenheim  
Morgan Keegan  
5956 Sherry Lane, Suite 1900  
Dallas, Texas 75225  
(w/o enclosures)

Mr. Curt Shelmire  
Morgan Stanley  
6300 Bridge Point Parkway, Suite 125  
Austin, Texas 78730  
(w/o enclosures)

Mr. Carlos Sharpless  
Ramirez & Co., Inc.  
2323 South Shepherd, Suite 930  
Houston, Texas 77019  
(w/o enclosures)

Mr. Matthew Boles  
Fixed Income Banking  
RBC Dain Rauscher  
Cityplace  
2711 North Haskell Avenue, Suite 2400  
Dallas, Texas 75204  
(w/o enclosures)

c: Mr. Levi Davis  
Siebert, Brandford, Shank & Co., L.L.C.  
2626 Cole Avenue, Suite 400  
Dallas, Texas 75204  
(w/o enclosures)

Mr. Jerry L. Robinson  
Banc of America Securities, L.L.C.  
901 Main Street, Suite 6350  
Dallas, Texas 75202-3714  
(w/o enclosures)

Mr. Nathan McClellan  
Banc of America Securities  
901 Main Street, 7<sup>th</sup> Floor  
Dallas, Texas 75202  
(w/o enclosures)

Mr. Lance Etcheverry  
J.P. Morgan Securities, Inc.  
2200 Ross Avenue  
Dallas, Texas 75201  
(w/o enclosures)

Mr. Richard H. Litton  
Southwest Securities, Inc.  
1201 Elm Street, Suite 3500  
Dallas, Texas 75270  
(w/o enclosures)